1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 FOR THE NORTHERN DISTRICT OF CALIFORNIA 7 8 HARRY ELDRIDGE, No. C 07-5650 JSW (PR) 9 Petitioner, **ORDER DISMISSING PETITION** FOR A WRIT OF HABEAS 10 VS. **CORPUS** 11 RICHARD SUBIA, Warden, (Docket No. 3) 12 Respondent. 13 14 This is a petition for a writ of habeas corpus brought pro se by Petitioner pursuant 15 to 28 U.S.C. § 2254 challenging the constitutional validity of his state conviction. 16 Petitioner has filed a motion to proceed in forma pauperis which is now GRANTED 17 (docket no. 3). Petitioner's earlier habeas petition was filed under Case No. C:04-cv-18 0088 JSW (PR). That petition was denied as untimely by this Court on October 3, 2005. 19 Petitioner now files a separate habeas petition raising what appear to be different claims 20 on the than those raised in his earlier petition. 21 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was 22 signed into law on April 24, 1996. Under AEDPA, a district court must dismiss claims 23 presented in a second or successive habeas petition challenging the same conviction and 24 sentence that were raised in a previous petition. See 28 U.S.C. § 2244(b)(1); Babbitt v. 25 Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must 26 dismiss any new claims raised in a successive petition unless the petitioner received an 27 order from the court of appeals authorizing the district court to consider the petition. 28 28

1 | U.S.C. § 2244(b)(3)(A). Here, the instant petition challenges the same conviction and sentence as the previous petition decided by this Court in 2005. Petitioner has not presented an order from the court of appeals authorizing the Court to consider these claims. Accordingly, the Court must dismiss the instant petition in its entirety. Petitioner is free to seek such an order from the United States Court of Appeals for the Ninth Circuit. See, 28 U.S.C. § 2244(b)(3)(A). **CONCLUSION** For the forgoing reasons, the petition for writ of habeas corpus is DISMISSED as a second and successive petition. The Clerk shall close the file and enter judgment in this matter. IT IS SO ORDERED. DATED: November 29, 2007 United States District Judge

1	UNITED STATES DISTRICT COURT
2	FOR THE
3	NORTHERN DISTRICT OF CALIFORNIA
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6	HARRY EDLRIDGE, Case Number: CV07-05650 JSW
7	Plaintiff, CERTIFICATE OF SERVICE
8	V.
9	RICHARD SUBIA et al,
10	Defendant.
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12	I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. Distric Court, Northern District of California.
13	That on November 29, 2007, I SERVED a true and correct copy(ies) of the attached, by placing
14	said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
delivery receptable located in the Clerk's office.	delivery receptacle located in the Clerk's office.
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17	Harry L. Eldridge
18	P.O. Box 409000 H06424
19	one, CA 95640-9000 Amuju Ottoliu ated: November 29, 2007
20	Richard W. Wieking, Clerk
21	By: Jennifer Ottolini, Deputy Clerk
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